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SENATE BILL 529
By McNally

AN ACT to amend Tennessee Code Annotated, Title 56, relative to pharmacy access and services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 7, Part 23, is amended by adding the following language as a new section to be designated as follows:

Section 56-7-2362.

(a) No health insurance issuer may:

(1) Deny any licensed pharmacy, or licensed pharmacist, the right to participate as a participating provider in any policy, contract or plan on the same terms and conditions as are offered to any other provider of pharmacy services under the policy, contract or plan; provided, that nothing herein shall prohibit a health insurance issuer from establishing rates or fees that may be higher in non-urban areas, or in specific instances where a health insurance issuer determines it necessary to contract with a particular provider in order to meet network adequacy standards or patient care needs.

(2) Prevent any person who is a party to or beneficiary of any policy, contract or plan from selecting a licensed pharmacy of such person's choice to

furnish the pharmaceutical services offered under any contract, policy or plan; provided the pharmacy is a participating provider under the same terms and conditions of the contract, policy or plan as those offered any other provider of pharmacy services;

(3) Permit or mandate any difference in coverage or impose any different conditions, including co-payment fees, so long as the provider selected is a participant in the contract, policy or plan involved.

(b) Notwithstanding any provision of this chapter to the contrary, a health insurance issuer may restrict an abusive or heavy utilizer of pharmacy services to a single pharmacy provider for non-emergency services, so long as the individual to be restricted has been afforded the opportunity to participate in the process of selection of the pharmacy to be used, or has been given the right to change the pharmacy to be used to another participating provider of pharmacy services prior to such restriction becoming effective. After a restriction is effective, the individual so restricted shall have the right to change a pharmacy assignment based on geographic changes in residence or if the member's needs cannot be met by the currently assigned pharmacy provider.

(c) If a health insurance issuer revises its drug formulary to remove a drug from a previously approved formulary, the health insurance issuer shall allow a subscriber or enrollee an opportunity to file a grievance relative to the decision to remove such drug. The grievance must be filed within sixty (60) days after notification to the provider that the drug is being removed. If the grievance is filed with a health insurance issuer within ten (10) days after the subscriber or enrollee knows or should have known that the drug is being removed, the subscriber or enrollee may continue to receive the drug that is being removed from the formulary until the health insurance issuer completes the grievance process. The provisions of this subsection shall not apply to any drug removed from a previously approved formulary when the reason for such removal is due

to patient care concerns or other potentially detrimental effects of the drug. Nothing contained in this subsection shall be construed or interpreted as applying to the TennCare programs administered pursuant to the waivers approved by the United States department of health and human services.

(d) Any violation of this section shall be deemed an unfair or deceptive act or practice under the Tennessee Consumer Protection Act of 1977, codified as Tennessee Code Annotated, Title 47, Chapter 18, Part 1, and any person, including any consumer, licensed pharmacy or licensed pharmacist, who suffers an ascertainable loss of money or property as a result of such violation is entitled to maintain a private right of action to recover damages pursuant to §47-18-109.

(e) The provisions of this section shall not apply to health plans preempted from state regulation by the Employee Retirement Income Security Act of 1974 ("ERISA").

SECTION 2. Tennessee Code Annotated, Title 56, Chapter 32, Part 2, is amended by adding the following language as a new section to be designated as follows:

Section 56-32-237.

(a) As used in this section "managed health insurance issuer" means an entity (1) that offers health insurance coverage or benefits under a contract that restricts reimbursement for covered services to a defined network of providers and (2) that is regulated under this title or is an entity that accepts the financial risks associated with the provision of health care services by persons who do not own or control, or who are not employed by, such entity.

(b) A managed health insurance issuer regulated under this chapter and part is required to comply with all provisions of §56-7-2362 which apply to a health insurance issuer regulated under Chapter 7, Part 23 of this title.

(c) Any violation of this section shall be deemed an unfair or deceptive act or practice under the Tennessee Consumer Protection Act of 1977, codified as Tennessee

Code Annotated, Title 47, Chapter 18, Part 1, and any person, including any consumer, licensed pharmacy or licensed pharmacist, who suffers an ascertainable loss of money or property as a result of such violation is entitled to maintain a private right of action to recover damages pursuant to §47-18-109.

(d) The provisions of this section shall not apply to health plans preempted from state regulation by the Employee Retirement Income Security Act of 1974 ("ERISA").

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect July 1, 2001, the public welfare requiring it.